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ABSTRACT

The demand for quality child care services from low- and middle-income families continues to increase. Government regulation is one means to ensure a basic threshold of high-quality care; however, political support for effective, comprehensive regulation of child care is declining. For example, few states require licensing staff to possess a degree in early childhood education or child development. Other areas of concern include statutory exemptions of child care providers based upon the number of children served within a private home or center and exemptions based upon religious affiliation or other geographic or programmatic factors. Recommendations for improved regulation are: (1) the establishment of educational and training standards for personnel responsible for implementing child care regulation; (2) a commitment to research in child care licensing; (3) creation of a National Center for Excellence for Regulatory Administration in Child Care; and (4) a commitment to increase the visibility of licensing as a part of a comprehensive approach to create high-quality child care in America. (Contains 21 references.) (LPP)

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THE FOUNDATION FOR CHILD DEVELOPMENT

REGULATION:
An Imperative for Ensuring Quality Child Care

Harold S. Gazan, MSW, ACSW

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ABSTRACT

The demand for quality child care services from low- and middle-income families continues to increase. The Temporary Assistance to Needy Families program (of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) requires participants to work within two years of receiving assistance. Families will need affordable and accessible child care. While research on child care stresses the importance of quality, the role played by governmental regulation to ensure a basic threshold of quality care is often neglected. This paper takes a closer look at this dimension of quality child care and suggests several steps to improve governmental regulation.

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INTRODUCTION

The demand for quality child care that is affordable and accessible is very high and will continue to increase as we move into the 21st century. It is estimated that by the year 2000, 70 percent of America's preschool-age children will have mothers who are working or looking for work outside their homes. Among minority children, the proportions are likely to be greater (*Hayes, et al, 1990, p. 39).* We have a tough challenge to educate our policy-makers on the imperative for a comprehensive, national child care policy. Parents, consumers of child care at all income levels, desire the security of knowing that their children are receiving care that is safe, trustworthy, and of quality.

Licensing is essentially government regulation of a private enterprise that involves a public interest (*A Licensing Curriculum, National Association for Regulatory Administration [NARA] 1998).* Licensing seeks to reduce risks and to prevent harm and exploitation of vulnerable recipients of service. Licensing is consumer protection through prevention, which is NARA's vision statement. Child care involves infants, toddlers, young children and school-age children. Preschool-age children are particularly vulnerable to child care that is not provided by competent staff *(Kontos & Wilcox-Herzog, 1997).* Regulation is the essential means for ensuring that a threshold of quality care is not crossed.

THE CURRENT STATUS OF CHILD CARE REGULATION

Weakening Political Support for Child Care Regulation While there are a few exceptions throughout the nation, political support for effective, comprehensive regulation of child care is declining. Michigan presently has 4,669 licensed child care centers, 3,513 licensed group homes, and 13,532 registered family child care homes. While the number of regulated facilities continues to increase (at a rate of more than 10% a year), licensing staff have been reduced by 18%. According to a survey that I conducted for NARA about a year ago (*Gazan, 1997*), most states reported an increase in the number of child care centers requiring licensure. Yet, 12 states out of the 26 responding states were not adding licensing staff.

A recent article (*Young et al, 1997*) has documented the status of regulatory safeguards in the U.S. Their analysis of center-based infant and toddler child care concluded that there is considerable need for improved licensing rules and enforcement practices. U.S. News and World Report, in an article last year, also documented the inability of child care regulators to guarantee or assure the safety and well-being of young children (*Pope, 1997*). What these articles point out is not the failure of licensing as a concept of safeguarding; rather, they illustrate the lack of effective rules, the failure of state policy makers to ensure statutory strength for the regulatory process, the unwillingness of governors and legislative bodies to appropriate the resources needed to fully implement an effective licensing program, and the lack of will on the part of many agency administrators to enforce the law. In some states, the licensing process has become politicized.

Inadequate Training of Licensing Staff Few states require licensing staff to possess a degree in early childhood education or child development. Michigan requires its licensing staff to possess a master's degree in early childhood education, social work or child development and to have had two years of professional experience in early childhood education or early elementary education.

Licensors of child care programs in too many instances are not professionally educated and lack specific training in regulatory administrative procedures applied to child care regulation. This lack of appropriately trained and competent licensing staff seriously impedes the effectiveness of child care regulation.

If you were to talk with people who have responsibility for the regulation of child care facilities, they would share with you a perspective that speaks of their loneliness. They often do not have the respect of the child care community or of the political community for their endeavors. Licensors are easy and frequent targets of politicians who like to blame licensing for everything from increasing the cost of child care to being bureaucratic roadblocks. These impressions are based upon written comments submitted as a part of the previously referenced survey conducted last year, and by personal interviews. Collegiality is difficult. Many states are not willing to authorize out-of-state conference attendance, and often do not allow participation in or severely limit the number of staff who are authorized to attend conferences within a state. Additionally, training in administrative law and its application to

child care regulation is lacking in many states. Staff assigned to licensing positions often come from other disciplines and do not fully understand the role, purpose, and processes of licensing. With a background in human services or teaching, they may not be familiar with or comfortable with the protocols and terminology of a program laden with technical procedures, governed by the constitutional principle of due process, and guided by administrative law and processes.

Consumers are often ambivalent about the need for the regulation of a particular service. We as consumers want the results of a vigilant Food and Drug Administration and a strong Federal Aviation Administration, but we simultaneously want to downsize government, to streamline procedures and to reduce taxes. This conflict generally means that something is going to be left undone. Government testing of proposed drugs may be reduced, or timely and vital inspections of commercial airplanes may be compromised. Is there a willingness on the part of the citizenry to pay for effective regulation of child care as a vital means to achieve quality care?

There is no doubt that we need excellent standards for pilots and airline mechanics, and sophisticated inspection schedules for engine maintenance (and I believe that America's airline pilots are the most highly trained and skilled pilots in the world). All of this is not enough, however, if there is not also a cadre of highly trained and skilled inspectors authorized to carry out the number of on-site program observations that are required to effectively monitor compliance on an ongoing basis. Even having a cadre of trained inspectors is not sufficient. If high-level government administrators are not also willing to enforce when the situation so demands, the desired results will never materialize. The airliner that crashed into the Florida Everglades Swamp tragically illustrates what happens when regulatory enforcement is compromised for the sake of business expansion.

The U.S. Department of Defense (DOD) recently made a commitment to enforce higher standards and to pay for changes required to meet those standards in the 800 child care centers it operates on military bases around the world (*Auster, 1997*). DOD, recognizing the need for continuity of child care staff, has increased entry-level pay. If DOD is willing to make this commitment for quality child care for our military personnel and their dependents, Congress should be persuaded to make it happen for the rest of our nation as well.

Statutory Child Care Exemptions Statutory exemptions of child care providers based upon the number of children served within a private home or center is another area of concern. A bill has been introduced in the Michigan Senate that would exempt any private home caring for fewer than five children from state regulation. Family day care homes play a vital role by making child care readily accessible within a neighborhood. They are often able to provide child care on a more flexible schedule to meet various child care needs of young, single parents. Some states use registration as an alternative to licensing. Registration is a process whereby the state usually issues a certificate to operate which is granted in exchange for a before-the-act registration of the person's intent to provide child care. This approach has many variants, some of which result in a lack of any meaningful regulation or enforcement. Presently, more than half of the states have some form of exemption based upon the number of children being served with a home or center.

South Dakota and Idaho exempt providers caring for 12 or fewer children; Virginia exempts family day care; Iowa, Ohio, and Louisiana exempt providers caring for 6 or fewer children in their own homes (*Adams, 1995*). These exemptions expose a large number of children to high levels of risk; these exempt providers have not had criminal history or child protection register clearances; they are not required to receive training in first aid and emergency procedures, or to receive instruction in the basic principles of child development. No inspection of the home occurs to ensure that cleaning compounds or other hazardous or poisonous substances and materials are kept out of reach or in locked cabinets away from young children. These are serious gaps in child care protection. Often, these service gaps occur in neighborhoods and communities where lower income parents are concentrated. There is a social justice issue here of some consequence.

Exemptions Based Upon Religious Affiliation or Other Geographical or Programmatic Factors Lastly, regarding the status of child care regulation in our nation, I wish to comment on the need for the regulation of all child care facilities regardless of religious affiliation, regional or jurisdictional responsibility. During the 1970s and 1980s, there was a trend throughout much of the nation for certain churches to resist government regulation on the basis of religious exemption. In some states, these churches challenged the law in courts. In other states (i.e., Alabama, Indiana, North and South Carolina, Utah, and Virginia),

certain churches were able to convince the legislatures of their respective states to amend their licensing laws and thereby obtain religious exemptions. I also want to emphasize that many church organizations do support governmental regulation of child care.

There will always be challenges intended to weaken or to circumvent the equal application of the law, sometimes for what appear to be reasonable cause. In 1981, the Michigan Department of Social Services initiated court action against a Baptist Church that had returned its license and continued to operate in defiance of the law. Many other churches had followed the example of this church. They believed that the operation of a child care center by a church was, in essence, an extension of that church's ministry and therefore exempt from state regulation. The process of judicial review was a lengthy one. The Department prevailed in Circuit Court, prevailed before the Michigan Court of Appeals, and nine years after having initiated the court's enforcement of the law, the State's Supreme Court unanimously held: "The Department of Social Services regulation prohibiting corporal punishment is justified by a compelling state interest and may be enforced...The First and Fourteenth Amendments of the United States Constitution do not prevent the state from compelling the defendants to conform to the licensure requirements of the Child Care Organization Act." (*Syllabus, Michigan Supreme Court, 1990, P.I.*) This decision upholds a vital value: regardless of ethnicity, religion, race, or economic circumstance, the licensing process must be fairly applied to ensure a floor of protection to all consumers.

I am reminded of a personal experience early in my career as the director of the division of child care licensing. Michigan's western shoreline along Lake Michigan is a concentrated fruit-growing region, and employs a considerable number of migrant laborers to harvest the fruits. There are several organizations that establish child care centers for the young children of migrant workers. One such organization had obtained the use of a somewhat dilapidated, vacant building. The building did not meet local fire safety standards. The local office of Social Services (I worked within the same agency, but in the central office) argued vociferously that the building was safe for the migrant children because during the summer months the doors would be open, and the furnace would not be used. The local office argued that it was safer to have the children in this building under the supervision of adults than to leave them in the fields under the hot sun, exposed to the

weather. Central office was accused of being "picky" and "bureaucratic." By way of an aside, we in regulation have to be constantly vigilant that we do not become bureaucratic in the negative sense -- where the spirit of the law is overshadowed by a loss of common sense.

Having stood the line within the Department, I then received a telephone call from a Governor's aide who asked whether I was supportive of the Governor's interest to maintain a strong environment for business to flourish in our great state, and did I not realize that the agricultural business was second only to the automotive industry as a bedrock of our economy. He went on to say he was sure I would facilitate this goal by issuing a temporary license. I responded in the affirmative on the basis that he would give me in writing a memorandum that stated that the children of migrant parents were more fire-proof than were children of other parents. He slammed the phone down in my ear and, although I was sure that my career with the Department would have an early demise, I never heard another word about it from anyone.

In a very few days, it was reported to our staff that local organizations were going to donate labor and materials to renovate the building. Within a very short time, the building was sufficiently renovated, came into compliance with local building and fire codes, was fully equipped, a license was appropriately issued, and migrant children were provided excellent child care in a safe environment -- as safe as the preschool nursery in an affluent community. That is what licensing is intended to do. Licensing at its best fulfills the democratic principles of our society: "Equal Protection Under the Law."

We will not have quality child care for America's children until every child, regardless of race, religion, ethnicity, or geographical location, is afforded the protection and safeguarding that comes from an effective regulatory program. The Mexican-American child of a migrant worker in the agricultural areas of our nation and the child of an affluent suburban family both deserve equal protection under the law. We do not exempt medical doctors on the basis of their religious affiliation or geographical location. Nor should we allow it for child care programs and facilities. This is still a battle that needs to be fought.

RECOMMENDATIONS FOR IMPROVED REGULATION

If regulation is going to be a dynamic force for achieving quality that I believe it can and should be, a number of steps need to be initiated.

- **The establishment of educational and training standards for personnel responsible for implementing child care regulation**

Licensing personnel should be expert in child development as well as the basic principles of regulatory administration. They need to be competent in assessing the adequacy of the play equipment and its age-size appropriateness, as one example. Additionally, they need to be expert at documenting their observations, and establishing patterns of evidence. In essence, licensing personnel need to be able to apply and interpret licensing rules within the context of a profound understanding of early childhood education and child development principles, coupled with a knowledge of operating child care programs.

While states must be able to promulgate their own rules, the federal government has a legitimate and needed role as well. The federal government should encourage states to develop effective child care regulatory programs and can do so by using federal financial participation (FFP) incentives. One criterion for qualifying for FFP should be adherence to standards of education (a combination of academic education, child care experience, and training in regulatory administrative principles) for all licensing personnel. This is one means of ensuring personnel assigned to regulate child care programs.

I believe that the academic community must acknowledge more clearly the role and value of child care regulation as an imperative dimension of quality child care. Sometimes the idealism of academia and its apparent ambivalence regarding the use of enforcement powers of licensing standards has made for an unfortunate estrangement between the licensors and the academic community. Regulators need the idealism of and research findings from academe, but regulators also need their understanding, support, and encouragement.

The business community also needs to be challenged more than it has bene to be partners in establishing and maintaining an effective child care regulatory agency. The business community is a stake holder in the scheme of things as well. It is an established fact that employee

absenteeism is substantially reduced when parents have reliable and effective child care.

If the floor of protection for child care within our various states is going to be at a level that truly protects children, and effectively provides for their developmental and relational needs, all stakeholders should coordinate their efforts to lobby their state legislatures and governors' offices to achieve effective child care regulation by professionally competent and trained licensing personnel.

- **A commitment to research in child care licensing**

Data are required to support the need for a strong regulatory program. What works and what does not? What is the impact of licensing on preventing deaths and serious injuries?

Traffic engineers can predict with a fair degree of accuracy the number of accidents that will occur in a specific time frame at a particular intersection, once they have studied the traffic flow patterns. They are able to predict the number of fatalities, the amount of property damage, and the impact on traffic flow if a stop light were not placed at a certain intersection. We are a long way from having that kind of data in child care regulation. Are the standards of care for infants, toddlers, and young children any less important than traffic control standards? Without effective program monitoring and enforcement, there cannot be quality child care. And without access to meaningful data, we are not able to effectively persuade legislative bodies of the need for increased regulation.

The history of regulation is that it seems only to follow human tragedy. I have already referred to the crash of the ValueJet airliner. I note a tragic child care situation.

Some 14 years ago in the State of Hawaii, three children were abducted from a child care center and raped. The abduction of the preschool-aged girls occurred without the awareness of staff at the child care center. Once the tragic circumstances came to light, the state's regulatory program and monitoring practices came under intense scrutiny. As a result, many changes occurred. Licensing rules were revised, agency procedures for monitoring child care providers were reviewed and improved, and all child care licensing personnel

were given extensive training. However, one of the State Auditor's findings was the noticeable lack of empirical research as a foundation for many of the child care licensing rules (*Audit Report of the Legislative Auditor of the State of Hawaii, 1985*).

Administrative agencies responsible for the regulation of child care services need to make greater use of the empirical findings of research to formulate realistic, measurable, and enforceable child care regulations, and to refine their enforcement operations. Professor William Gormley of Georgetown University is one academician who has conducted considerable research in child care regulation. His most recent article, "Regulatory Enforcement Styles" (*Gormley, 1998*), is worthy of being read by administrators of regulatory programs. Nevertheless, academe needs to be more willing to target research on child care regulatory effectiveness and weaknesses. Administrators of child care regulatory agencies need research data to make their case more effectively before legislative committees.

- **Creation of a National Center for Excellence for Regulatory Administration in Child Care**

The establishment of a National Center for Excellence in Child Care Regulation requires that it be an organization committed to collaboration among academe, NARA, and early childhood professional organizations such as the National Association for the Education of Young Children.

Such a center should be more than a clearinghouse. Rather, it needs to be a center of research and benchmark data, training, and certification of licensors of child care services. As an example of benchmark data that needs to be collected, how many children die in child care, are neglected, or are injured each year, and what are the contributing factors? We do not know how many children in child care settings were injured, or left unattended in motor vehicles, facilities, or playgrounds, and the circumstances of each incident. It is from such data that regulatory agencies will be able to revise licensing rules, and defend them before administrative or legislative bodies. This data will enhance the training of licensing personnel by providing them with stronger rationale for the importance and value of the licensing rules and procedures.

Training standards for licensors must also be developed. While NARA, engaging its members on a voluntary basis, developed training curricula, the refinement and expansion of training curricula is required. Additionally, there is a need to establish competency standards for licensing personnel and a means for evaluating licensors.

Regulatory agencies must be able to apply findings from research and need help in codifying these findings into administrative rules. (For example, the brain research on young children has implications for certain minimal cognitive stimulation activities in a center providing care to infants and toddlers.)

- **A commitment to increase the visibility of licensing as a part of a comprehensive approach to create quality child care in America**

All sectors of the child care community (providers of child care, parents who are consumers of child care, the academic community, and advocacy organizations) should give state licensing agencies their attention. Licensing staff should be professionally competent. Civil service agencies should recognize professional standards of education and experience. Early childhood professionals should become involved in the promulgation process to ensure that licensing rules reflect appropriate and relevant research findings on child development. Lastly, licensing must not be politicized. Licensing can be a lonely job. Licensors need to know that their role is valued.

CONCLUSION

I am convinced that we need not more licensing rules. What we really need are better rules -- rules that are supported by research. We already have the research to support the "iron triangle: group size, staff qualifications, and staff/child ratio." (*Hayes, et al, 1990, p. 87*) What we lack in many states is the legislative will to support the promulgation and enforcement of such rules. We also need state standards for licensor qualifications and standards for licensor workloads. All of these factors combined will enhance the quality of child care in America. Indeed, licensing is an imperative for ensuring quality child care.

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